

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRANDON HEARNS,

Plaintiff,

v.

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CIVIL ACTION NO. 1:05CV151
(Judge Keeley)

JIM RUBENSTEIN, Commissioner,
WILLIAM HAINES, Warden,
TOM RADFORD, Correctional Officer,
WEST VIRGINIA DIVISION OF
CORRECTIONS, NATIONAL UNION FIRE
INSURANCE COMPANY OF PENNSYLVANIA,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

On November 18, 2005, pro se plaintiff Brandon Hearn, a state inmate at the Huttonsville Correctional Facility ("Huttonsville"), filed a civil rights complaint under 42 U.S.C. §1983 and the Federal Tort Claims Act ("FTCA"). In his complaint, Hearn alleges that he was severely beaten by other inmates on two separate occasions after being placed in special treatment units within the Huttonsville facility. He claims, consequently, that the defendants were grossly negligent and deliberately indifferent to his safety and well being, that they failed to provide him with adequate follow-up medical treatment, and that their negligence and deliberate indifference failed to prevent the permanent brain and eye damage from which he now suffers, all in violation of the Eighth Amendment to the United States Constitution and the Federal Torts Claim Act.

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By standing Order, the Court referred this matter to United States Magistrate Judge James E. Seibert for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.02. On August 22, 2006, Magistrate Judge Seibert issued a Report and Recommendation recommending that Hearn's FTCA claim be dismissed without prejudice because none of the named defendants are federal employees and that, given the facts currently before the Court, Hearn's Eighth Amendment claims should proceed and the defendants ordered to respond to the complaint.

Further, the Magistrate Judge's Report and Recommendation specifically warned that failure to timely object to the recommendations would result in the waiver of Hearn's right to appeal any judgment of the Court based on those recommendations. Hearn did not timely object to Magistrate Judge Seibert's Report and Recommendation.¹

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety, **DISMISSES** Hearn's FTCA claim **WITHOUT PREJUDICE**, and **DIRECTS** the Clerk of Court to serve the amended complaint (docket no. 20) on the defendants.

¹ Hearn's failure to object to the Magistrate Judge's ruling on his Federal Tort Claim Act not only waives his appellate rights on this issue but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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It is so ORDERED.

The Clerk is directed to mail a copy of this Order to the pro
se petitioner via certified mail, return receipt requested and to
counsel of record.

Dated: November 3, 2006.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE